IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 649 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAFATLAL INDUSTRIES LTD

Versus

NAVASARI NAGAR PALIKA,

Appearance:

1. Special Civil Application No. 649 of 1980

MR S.I.NANAVATI, Ld.Senior Advocate with Mr.SANJIV DAVE, Advcoate for Petitioner

MR MC SHAH for Respondent

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 08/02/2002

ORAL JUDGEMENT

1. Mafatlal Fine Spinning and Manufacturing Company Limited - petitioner company has filed this petition for a writ of mandamus or a writ of prohibition restraining the respondent Municipality - Navsari Nagar Palika,

Navsari from recovering octroi on the grey fabrics brought by the petitioner from their Bombay Mills within the octroi limits of the respondent which fabrics, after processing in their process house, are exported back. The petitioner company further prayed that the respondent Municipality be restrained from recovering or taking any coercive measures in that behalf for recovery of octroi as threatened by them from January 1, 1977. The petition was filed somewhere in March 1980. When the matter was placed for hearing before Division Bench of this Court, the Division Bench has admitted the matter on 18th March, 1980, and also granted interim relief in this behalf.

2. The facts giving rise to this petition are as under:-

2.1 Mr.S.I.Nanavati, learned Senior Counsel appearing on behalf of the petitioner has contended that as per the petition the petitioner's company had a unit at Bombay. However petitioner's company took a decision to set up a new process house in the vacant land belonging to the petitioner at Navsari. For that purpose they requested the Navsari Nagar Palika - respondent to give permanent exemption for octroi. It is their contention that new process house was expected to cater the dyeing, printing and finishing requirements of the grey fabrics manufactured at Navsari Mill as also the requirement of the grey fabrics manufactured at the Bombay Mills. It was stated that this change over and shifting of plant and machinery and commissioning of new equipments for the upto date process house at Navsari involved huge investment to the extent of nearly Rs.3.44 Crores.

2.2 It was decided that most of the textile fabrics manufactured in the Bombay Mills were expected to be carried to Navsari in grey condition and after processing they would be despatched back to Bombay or to any other places outside the octroi limits of the respondent. Although the grey textiles were not expected to be brought within the octroi limits of the respondent for consumption, use or sale within the said octroi limits, it was debatable as to whether the grey textiles after they were processed and re-exported from the octroi limits of the respondent, they can be said to have changed its form so as to be a new product and, therefore, not entitled to refund of octroi. If octroi was payable on importing grey textiles within the octroi limits of the respondent, it was so deterrent tax that the entire idea of setting up a new process house at Navsari would have been dropped by the petitioner and, therefore, in order to secure assurance and promise in

that behalf that such grey textiles on their being brought within the octroi limits of the respondent would not be liable to octroi, a specific letter dated 24th November, 1968 was addressed by the petitioner to the respondent which is produced at Annexure `A' to the petition.

2.3 In the said letter, after pointing out the benefit to the developing town of Navsari in the matter of employment and prosperity and consequent upon setting up of industry, it was further pointed out that the municipality would, inter alia, benefit by getting octroi on colours, chemicals etc. which will have to be imported for running the process house at Navsari and the respondent-municipality would also get house tax on the process house to be constructed for that purpose. Having pointed out such benefits to the town of Navsari and the respondent in particular, it was specifically stated by the petitioner in the said letter that the proposal to set up Process House at Navsari will be implemented only if the respondent communicates a decision to the petitioner that no octroi will be collected on the grey cloth brought from Bombay Mills within the octroi limits of the respondent for the purpose of processing and to be exported back after such processing.

2.4 On the said letter the Municipality passed the resolution dated 30th December, 1968, which was communicated to the petitioner company on 8th January, 1969. In the said resolution, the Municipality stated that the petitioner company can instal a plant but on condition that whatever the grey cloth brought within the octroi limits of the respondent will be taken back after processing in the process house, no octroi will be collected thereon and such import will be exempt from octroi. It is specifically stated that, as regards process of all chemicals and other items (except grey cloth) imported within the octroi limits are concerned, then it will be liable to octroi as per rules and regulations. It was also stated that for that purpose as per Clause 5(26) of the Octroi Rules and Bye-laws will be applicable and exemption will be granted to that extent. The said resolution has been passed specifically when the petitioner has addressed a letter for complete exemption of the plant in this behalf.

2.5 Relying upon the assurance and promise contained in the said resolution, the petitioner - company set up a process house at the cost of Rs.3.44 Crores and the process house was commissioned from January 1, 1972.

2.6 The petitioner also stated that the Municipality also passed another resolution on September 19, 1970, exempting the section No.1 of the new extension from taxes as per rules clarifying that would merely include machinery and raw materials. The purpose of the said resolution was to exempt machinery and raw materials and the said resolution had nothing to do with the permanent exemption which was granted from octroi on the grey cloth brought within the octroi limits of the respondent for the purpose of processing and which was to be exported back after processing as per the earlier resolution No.467 of dated 30th December, 1968.

2.7 After commissioning of the new process house from January 1, 1972, the petitioner-company used to bring in grey cloth from Bombay Mills within the octroi limits of the respondent for the purpose of processing in their new process house specially set up for the purpose as per the assurance and promise of the respondent contained in their resolution dated 30th December, 1968, and no objection was raised in that behalf and no attempt was made to levy or collect octroi on the said goods even after the period of five years had expired on December 31, 1976.

2.8 The President of the respondent addressed a letter dated 11th October, 1977, and stated that on expiry of five years from commissioning of the new process house, the grey cloth brought for processing has become liable to octroi from January 1, 1977 and the petitioner was called upon to calculate the amount of octroi on such grey cloth brought within the octroi limits from January 1, 1977 and make a declaration in this behalf.

2.9 Thereafter the petitioner addressed a letter dated 20th October, 1977, to the respondent pointing out therein that the petitioner, relying upon the assurance given and promise held out by the respondent by their resolution dated December 30, 1968, had set up a modern process house within the municipal limits of the respondent and thus helped to solve the problem of employment in the town of Navsari and also contributed income of the respondent municipality on other items is also increased substantially by Rs.75,000/- per month from January, 1977.

2.10 Thereafter correspondence ensue between municipality on one hand and the petitioner on the other hand. However, ultimately the Municipality passed the Resolution No.696 of dated 11th February, 1980, and

stated that the petitioner is liable to pay octroi in this behalf.

2.11 Being aggrieved and dissatisfied with the said action, the petitioner has filed the present petition before this Court and stated above.

3. Mr.S.I.Nanavati, Learned Senior Advocate for the petitioner has raised several contentions for attacking the said resolution passed by the Corporation for levying octroi in this behalf. However, before the said contention can be considered, let me set out the relevant statutory provisions so that said contentions can be properly explained.

4. He has relied upon the Constitution of India Entry No.52 List 2 which provides as under:

"Entry No.52 Taxes on the entry of goods into a local area for consumption, use or sale therein."

4.1 In view of the said power the State Legislature has enacted Gujarat Municipalities Act, 1963.

Clause 2 of the said definition provides `octroi' means a tax on the entry of goods into the limits of Municipal Borough for consumption, use or sale thereon.

Sec.121(1) provides power to take effectual measures to prevent entry without payment of octroi.

Sec.122 provides octroi bye laws to be submitted with proposal for imposition octroi.

Sec.123 provides power to examine articles liable to octroi.

Sec.124 provides presentation of bills for octroi.

Sec.125 provides penalty for evasion of octroi.

Sec.127 provides power to seize vehicle or goods on non payment of octroi or toll.

Sec.128 provides power to keep account current with person, firm or public body in lieu of levying octroi on introduction of goods.

4.2 He has also referred to Sec.271 which provides municipality to make rules.

Sec.271(1) provides prescribing taxes:-

> Prescribing the taxes to be levied in the municipal borough for municipal purposes, the circumstances in which exemption will be allowed, the conditions on which and the extent to which remissions will be granted, and the system on which refunds will be allowed and paid in respect of such taxes; the limits of the charges or payments to be fixed in lieu of any tax under section 119, the fees to be charged for licences or permissions granted under section 118 and giving copies and stamping weights and measures; the fees for notices demanding payments due on account of any tax and for the issue and execution of warrants of distress and the rates to be charged for maintaining any live-stock distraned; and the mode in which such taxes, charges, payments, fees or rates shall be levied or recovered or be payable and the persons authorised to receive payment of the same and the manner in which auctions of movable and immovable property under section 134 shall be paid.

4.3 He has also referred to Sec.275 of the Act which provides power to make bye-laws:

"Sec.275 Power to make bye-laws :- (1) A

> municipality may from time to time, alter or rescind by laws not inconsistent with this Act.

"Sec.275(l) provides octroi :- fixing octroi

> limits and stations; providing for the exhibition of tables of octroi; regulating, subject to any general or special orders which the State Government may make in this behalf, the system under which refunds are to be made on account thereof when the animals or goods on which the octroi has been paid, or articles manufactured wholly or in part from such animals or goods, are again exported, and the custody of animals or goods declared not to be intended for consumption, use or sale within the municipal borough; and prescribing a period of limitation after which no claim for refund of octroi shall be entertained and the minimum for which any claim to refund may be made."

4.4 Learned counsel for the petitioner thereafter

invited my attention to the Navsari Borough Municipality Octroi Rules and Bye-laws. Octroi Rules and Bye-laws and Schedules framed by the Navsari Borough Municipality as required under Section 271(l) and 275(1)(l) of the Gujarat Municipalities Act, 1963.

Clause 5 of the said rules provides the following goods shall be exempt from the levy of Octroi particularly 26 of Clause (5) provides as under:

"26. Raw materials, semi finished goods, plant and machinery or any articles brought within the limits of the Municipality by a new industry, not for sale but for Manufacturing any goods or for erecting any factory.

Explanation: I:- For the purpose of this clause "New Industry" means:

(i) Any industry established on or after 1.4.1965.

(ii) Any industry which has been established before 1.4.1965 but in which the production of goods has commenced after the 1st April 1965.

(iii) In the case of any industry established before 1.4.65 but which has undergone or which undergoes expansion after that date the expanded part of such industry.

Explanation.II:- For the purpose of this clause "Expansion" shall not include replacement or overhauling of any existing machinery.

Provided that the exemption granted by this clause in respect of any new industry shall remain in force for a period of 5 years from the date of starting of such industry or the date of coming into force of this clause which ever date is later."

4.5A Learned counsel for the petitioner stated that in view of the constitution provisions and the statutory provisions of the Municipality Act, the Municipality has power to levy octroi on entry of goods for the purpose of sale, use and consumption. When the Municipality has power to levy tax, the Municipality has also power to exempt the tax also.

4.5B He, therefore, submitted that therefore the petitioner made specifically representation and on the said representation the Municipality has adopted the same and granted complete exemption so far as grey cloth is concerned. Whereas other items the Municipality has granted exemption for five years and therefore relying upon the said assurance the petitioner's company had installed a plat at the huge cost of Rs.3.44 Crores at Navsari. He, therefore, submitted that after granting said exemption in the year 1968 and thereafter also passed certain other resolutions also where there is no whisper about the power to limit of levy of octroi. Only on 11th October, 1977, for the first time the Municipality comes out with the case that as regards resolution dated 30th December, 1968, granted interpretation even for process house so as to grey cloth the exemption is only for five years and the petitioner is liable to pay from 1.1.77 i.e. after completing five years.

4.5C He further submitted that the respondent-Nagarpalika was very much aware about the high incidence of octroi in this behalf. He further submitted that octroi has the signal distinction of having four "qualifications" which no other levy possesses. It is the only tax which has been unanimously and unequivocally condemned by high-powered bodies specifically appointed to consider the desirability of its continuance. It is the only tax which has generated an epidemic of political schizophrenia. It is the only tax which has institutionalized corruption on so vast a scale that a strong lobby has grown up against its abolition. It is the only impost which taxes the people to a tolerable extent in terms of money and to an intolerable extent in terms of time and energy. (Re: Article of Mr. N.A. Palkhivala on octroi - from "We the Nation" at page 123).

4.5D He therefore submitted that petitioner company therefore made amply clear that as far as grey fabrics entering in the municipal limits, the respondent-Nagarpalika may completely exempt the octroi for ever whereas for other goods are concerned, the exemption may be granted for limited period.

4.6 Learned counsel further submitted that principle of promissory estoppel the Municipality cannot recover the octroi. He further submitted that, relying upon the assurance given by the Municipality, the petitioner has changed this position namely installed the plant at Navsari and after five years now the Municipality can not

say that the exemption of grey cloth is not applicable and it is only for limited period of five years.

4.7 In support of the said contention, he has relied upon the judgment of the Hon'ble Apex Court in the case of M/S. MOTILAL PADAMPAT SUGAR MILLS CO.LTD. vs. THE STATE OF UTTAR PRADESH AND OTHERS reported in AIR 1979 SC 621, particularly he has relied upon para 7, 8 and 9 and ultimately in para 24 on page 643 the Hon'ble Supreme Court observed as under:

"Para.24 ..... The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Govt. would be held bound by the promise and the promise would be enforceable against the Govt. at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Art. 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Every one is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned : the former is equally bound as the latter. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire

legitimacy and gain social acceptance unless accords with the moral values of the society and the constant endeavour of the Courts and the legislatures must, therefore, be to close the gap between law and the morality and bring about as near an approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction."

On page 651 the Court further observed thus:

"We do not think that in order to invoke the doctrine of promissory estoppel it is necessary for the promisee to show that he suffered detriment as a result of acting in reliance on the promise. But we may make it clear that if by detriment we mean injustice to the promisee which would result if the promisor were to recede from his promise, then detriment would certainly come in as a necessary ingredient. The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promisor were allowed to go back on the promise."

4.8 He has also relied upon the judgment of the Hon'ble Supreme Court in the case of UNION OF INDIA AND OTHERS vs. GODFREY PHILIPS INDIA LTD. reported in AIR 1986 SC 806. In that case before the Three Bench Judges of the Hon'ble Supreme Court the question arose from the letter of the Union of India which stated that corrugated fibre board containers are not an integral or essential requirement for the sale of cigarettes and are used for the sole purpose of protecting cigarettes from any damage that may arise during transportation and that the cost of such corrugated fibre board containers should not therefore be included in the value of the goods for the purpose of excise duty cannot be considered to be a special order within meaning of R.8(2) and cannot avail to cigarette manufacturers for claiming exemption of excise duty in respect of corrugated fibre board containers. In that case as regards promissory estoppel is concerned, the Court has relied upon the earlier judgment of the Hon'ble Supreme Court in the case of Motilal Sugar Mills Vs. State of Uttar Pradesh and overruled the Jeet Ram's case and ultimately in para 12 the Hon'ble Supreme Court has expressly approved the law laid down in Motilal's case and disapprove the case of Jeet Ram's case.

"Para.12 There can therefore be no doubt that the doctrine of promissory estoppel is applicable against the Goverment in the exercise of its governmental, public or executive functions and the doctrine of executive necessity or freedom of future executive action cannot be invoked to defeat the applicability of the doctrine of promissory estoppel. We must conceded that the subsequent decision of this Court in Jeet Ram vs. State of Haryana (1980) 3 SCR 689 : (AIR 1980 SC 1285) takes a slightly different view and holds that the doctrine of promissory estoppel is not available against the exercise of executive functions of the State and the State cannot be prevented from exercising its functions under the law. This decision also expresses its disagreement with the observations made in Motilal Sugar Mills case (AIR 1979 SC 621) that the doctrine of promissory estoppel cannot be defeated by invoking the defence of executive necessity, suggesting by necessary implication that the doctrine of executive necessity is available to the Government to escape its obligation under the doctrine of promissory estoppel. We find it difficult to understand how a Bench of two Judges in Jeet Ram's case could possibly overturn or disagree with what was said by another Bench of two Judges in Motilal Sugar Mills case. If the Bench of two Judges in Jeet Ram's case found themselves unable to agree with law laid down in Motilal Sugar Mills case, they could have referred Jeet Ram's case to a larger Bench, but we do not think it was right on their part to express their disagreement with the enunciation of the law by a co-ordinate Bench of the same Court in Motilal Sugar Mills."

4.9 He has also relied upon another judgment of the Hon'ble Supreme Court in the case of POURNAMI OIL MILLS vs. STATE OF KERALA reported in AIR 1987 SC 590.

4.10 He has also relied upon the judgment of the Hon'ble Supreme Court in the case of NATIONAL BUILDINGS CONSTRUCTION CORPORATION vs S.RAGHUNATHAN AND OTHERS reported in (1998) 7 SCC 66 particularly para 18 on page 75 in connection with legitimate expectation in this behalf which reads as under:

"Para.18 The doctrine of "legitimate expectation" has its genesis in the field of administrative

law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of "legitimate expectation" was evolved which has today become a source of substantive as well as procedural rights. But claims based on "legitimate expectation" have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel."

4.11 He has also relied upon another judgment of the Hon'ble Supreme Court in the case of PAWAN ALLOYS AND CASTING PVT.LTD. MEERUT vs. U.P.STATE ELECTRICITY BOARD AND OTHERS reported in (1997) 7 SCC 251 wherein on page 275 the Hon'ble Supreme Court observed as under:

"para.28 ..... The said decision is not an authority for the proposition that even if a claim of exemption from import duty was resorted to in public interest by way of an incentive for a class of importers and even though such public interest continued to subsist during the currency of such an exemption notification and that promisees for whose benefit such exemption was granted had changed their position relying on the said exemption notification, it could still be withdrawn before the time mentioned therein even though public interest did not required the said exercise to be undertaken and even though there were subsisting equities in favour of the promisee-importers. As such a situation had not arisen in that case it was not adjudicated upon."

4.12 He has also relied upon the another judgment of the Hon'ble Supreme Court in the case of ADMINISTRATION OF DAMAN & DIU AND ANOTHER vs. MOHANLAL LALBHAI DESAI AND ANOTHER reported in (2000) 1 SCC 27.

4.12A Learned Senior Counsel for the petitioner has also relied upon the judgment of the Hon'ble Apex Court in the case of ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (ASST.) DHARWAR AND OTHERS vs. DHARMENDRA TRADING COMPANY AND OTHERS reported in (1988) 3 SCC 570

particularly he has relied upon paras 5 and 6 on page 573 and 574 the Hon'ble Supreme Court has observed as under:

"Para 5 - The next submission of learned counsel for the appellants was that the concessions granted by the said order dated June 30, 1969 were of no legal effect as there is no statutory provision under which such concessions could be granted and the order of June 30, 1969 was ultra vires and bad in law. We totally fail to see how an Assistant Commissioner or Deputy Commissioner of Sales Tax who are functionaries of a State can say that a concession granted by the State itself was beyond the powers of the State or how the State can say so either". (emphasis supplied)

Para 6. Although we are of the view that the contention set out in the foregoing paragraph is not open to the appellants at all, we propose to examine the merits of that contention because, in our view, even on merits the contention raised must be rejected. The ground on which it was submitted that the said order of June 30, 1969 was invalid is that there is no provision under the Karnataka Sales Tax Act, 1957 (referred to hereinafter as `the said Act') under which any refund could be granted. ..... In our view, there is no substance in this submission at all. In order to test the validity of the order dated June 30, 1969, one has to see the substance of the concession granted under the order and not merely certain words used out of context. Although the benefit regarding sales tax granted to the new industriesa is by way of refunds of sales tax paid to the extent provided in the order, it is clear that, in effect, the benefit granted is in the nature of an exemption from the payment of the sales tax or reduction in the sales tax liability to the extent stated in the order. In view of this, there is no substance whatever in the contention that the State Government had no authority to provide for the grant of refunds. Again, the mere fact that the order of June 30, 1969 did not specify the power under which it was issued will make no difference because such a power is clearly there in Section 8-A and where the source of power under which it is issued is not stated in an order but can be found on the examination of the relevant Act, the exercise of the power must be attributed to that source. The second submission of the learned

counsel for the appellants must, also, therefore, be rejected."

4.13 He has also relied upon the Division Bench judgment of this Court in the case of AHMEDABAD ADVANCE MILLS LTD. vs. STATE OF GUJARAT AND ANOTHER reported in 1992(2) GLR 1232 in an identical situation the Division Bench of this Court in para 13 on page 1239 has observed as under:

"Para.13 In our opinion, on true interpretation of the Resolution of 1980 it will have to be held that the Government did give a promise to the entrepreneurs that if a new unit or project was set up on the basis of the assurance held out under the Scheme, and that the new industrial project was commissioned on or after 1.6.1980, then it was entitled to the benefits available under that Scheme, if by the time it was commissioned, i.e. by the time it commenced commercial production, the said industry was not included in the list of excluded industries. As the Scheme was operative for a period of five years only from 1st June, 1980, it will have to be further held that the assurance of benefits was available to these new industrial units or projects which had started commercial production on or after 1.6.1980 but before 31.5.1985 and which were not excluded earlier from the benefits of the Scheme. So far as the petitioner is concerned, the petitioner had started commercial production on 31st March, 1982. The industry in which it was engaged came to be included in the list of excluded industries on 15.9.1982, that is after it started commercial production, as we are not called upon to decide in this case whether it stood excluded by the Resolution dated 7.1.1982, it will have to be held that the petitioner was entitled and continued to remain entitled to the sales-tax deferment benefit under the Scheme for the full period, if other conditions were satisfied by it. The 2nd respondent was therefore clearly in error in granting sales-tax deferment certificate effective for the period between 31st March, 1982 and 14th September, 1982 only. In the view that we have taken, the petitioner will be entitled to the refund of the amount paid by it by way of sales-tax in respect of the finished goods manufactured by it between 31.3.1982 and 14.9.1982."

4.14 Learned counsel for the petitioner has also alternative contended that if he fails in first contention then in any view of the matter he has submitted that the petitioner's company become sick under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985, and for that purpose he has relied upon Civil Application No.9318 of 2001 filed in Special Civil Application No.649 of 1980. He submitted that when the company incurred continuous looses over a period of years and as a result of which the company fell sick. The said company, therefore, approached BIFR under the provisions of SICA Act. The BIFR registered the reference made by petitioner's company dated 22.2.2000 as Case No.104 of 2000.

4.15 The said case came up for hearing before BIFR on 19.9.2000 before Bench No.1 wherein the Bench after considering the facts on record and the submissions made by the representatives of different financial institutions, banks etc. was satisfied that petitioner's company had become a sick industries company in terms of Sec.3(1)(o) of the SICA Act, and the Bench had accordingly declared the said company as sick company. He, therefore, relied upon provisions of Sec.22 of the said Act and stated that in any view of the matter the Municipality even if succeed in main matter cannot recovered the said amount in view of the provisions of Sec.22 of the SICA Act and the order of the BIFR.

4.16 In support of the same he has relied upon the judgment of the Hon'ble Supreme Court in the case of MAHARASHTRA TUBES LTD. vs. STATE INDUSTRIAL & INVESTMENT CORPORATION OF MAHARASHTRA LTD. AND ANOTHER reported in (1993) 2 SCC 144.

4.17 In view of the aforesaid citation of the authority, learned counsel for the petitioner contended that in view of the aforesaid factual position as well as legal principle for which he has cited the Hon'ble Supreme Court judgment, he submitted that the Municipality had power to levy octroi on grey cloth and after considering the provisions of the Act and the Rules specifically deliberately departure made by Municipality to exempt grey cloth for all time to come relying upon that assurance the petitioner's company had installed the plant. In view of the principle of promissory estoppel, the Municipality cannot now assessed the levy octroi on the grey cloth in this behalf. If Municipality permitted to do so the same will be in violation of the principle of promissory estoppel in this behalf.

5. Mr.M.C.Shah, learned counsel for the respondent appeared on behalf of the respondent-Municipality. He has relied upon the affidavit-in-reply filed by one Purshottambhai Somabhai Patel, Chief Officer of Navsari Nagar Palika. He has relied upon the said affidavit and denied the contention of the petitioner that on the promise held out by the respondent to give permanent exemption from octroi that decision was taken to set up a new processing house by the petitioner company.

5.1 He further stated that it was not competent to the Board to grant exemption from payment of octroi duty for the grey fabrics which were processed at the processing house of the petitioner company. It was further stated that after the grey fabric is processed, it emerges as a new article, the grey fabric is different and altogether a new article from the processed fabric. It was further stated that the Nagarpalika was bound to levy octroi on the grey fabric imported within the municipal limits of the Nagarpalika brought in for the purpose of processing. When grey cloth is processed in the processing house, it is commercially a different article and the grey cloth can be said to have been used or consumed. The octroi being on the consumption, use or sale, the levy would be legal and valid.

5.2 It was further stated that there is no power to the Municipality to grant exemption under the rules and the bye-laws and the municipality could not have passed the resolution exempting the petitioner company from payment of octroi duty.

5.3 He submitted that at the best the resolution dated December 30, 1968 could be held to be a promise for exemption from payment of octroi duty for a period of five years only. This would be in consonance with the object of the municipality to help an infant industry which is being established within the limits of the municipality. It was submitted that the said resolution cannot bind down the municipality even after a period of five years.

5.4 He submitted that it is the duty of the municipality to recover the duty as required under the rules and the bye-laws and it being the statutory duty it was not competent to the municipality to agree not to levy the duty for all time to come, as is being understood by the petitioner. He submitted that the municipality was not competent to pass any such resolution for levy of octroi from the petitioner company for all time to come.

5.5 In support of the aforesaid contention, learned counsel for the respondent has relied upon the judgment of the Calcutta High Court in the case of Satibhusan Mukherjee Vs. The Corporation of Calcutta reported in AIR (36) 1949 Calcutta 20 on page 24 the Court observed as under:

> "There is a fundamental distinction between the capacity of a natural person and of an artificial person which has been created by Statute or Charter. To a natural person whatever is not expressly forbidden by the law is permitted by the law. He has the capacity to do everything save and except those forbidden by law. In the case of an artificial person - e.g., a corporation, which can be created either by charter or by statute the rule applicable to a natural person is reversed. Whatever is not permitted expressly or by necessary implication by the constituting instrument is prohibited not by any express or implied prohibition of the legislature but by the doctrine of ultra vires."

5.6 He has also relied upon the judgment in the case of Suraj Mall Mohta & Co. Vs. Visvanatha Sastri and another reported in AIR 1954 SC 545 on page 552 it has been observed as under:

> "It is well settled that in its application to legal proceedings Article 14 assures to everyone the same rules of evidence and modes of procedure; in other words, the same rule must exist for all in similar circumstances. It is also well settled that this principle does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstance, in the same position. The State can by classification determine who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject, but the classification permissible must be based on some real and substantial distinction bearing a just and reasonable relation to the objects sought to be attained and cannot be made arbitrarily and without any substantial basis."

5.7 He has also relied upon the judgment of this Court in the case of Chimanbhai Becharbhai Parmar & Others Vs. State of Gujarat & Others reported in 1996

(37) 3 GLR 54. In that case the Court has held that when petitioners were given benefits of accounts cadre by mistake though they were not entitled to the same under statutory rules, the rule of promissory estoppel and of estoppel by conduct cannot be invoked to alter or amend a specific provision of the statutory rules.

5.8 Mr.M.C.Shah, learned counsel for the respondent states that both act and rules are self-contained code and there is no power in the rules to give complete exemption to goods for ever and to that extent the resolution passed by the respondent-Municipality is beyond its power and therefore to that extent ultra vires.

CONCLUSION:

6. I have considered the submissions made by the learned counsel for the petitioner as well as respondent and I have also considered the several authorities cited by the learned counsel for the petitioner in this behalf. In view of the facts and circumstances which I have set out herein earlier, petitioner did address a letter dated 24th November, 1968, for obtaining complete exemption from payment so far as grey cloth is concerned.

WHAT IS MEANT BY PROMISSORY ESTOPPEL:

6A The basic principle of estoppel is that a person who by some statement or representation of fact causes another to act to his detriment in reliance on the truth of it is not allowed to deny it later, even though it is wrong. Justice here prevails over truth. Estoppel is often described as a rule of evidence, but more correctly it is a principle of law. As a principle of common law it applies only to representations about past or present facts. But there is also an equitable principle of `promissory estoppel' which can apply to public authorities. (Re: Estoppel on Administrative Law of Prof. H.W.R. Wade, 8th Edition at page 242 in the Chapter Estoppel where sub-chapter Estoppel and Public Authorities).

6B Para 8-059 - There have been isolated suggestions that for the courts to protect a legitimate expectation, it is necessary for the applicant not only to have been aware of the representation but also to have relied on it, and possibly to have acted to his detriment. In R. V. Secretary of State for the Home Department,

exp. Oloniluyi, the Court of Appeal held that the applicant had a legitimate expectation, encouraged by passport stamps and the representations of an immigration official, that she would have no trouble returning to the United Kingdom. It was held that she had relied to her detriment on those representations as she would not have risked going abroad without the representations, and that the refusal of re-entry altered her rights of appeal and prejudiced her chances of obtaining permission to enter in the future.

8-060 The suggestion that detrimental reliance might be necessary to found an application on legitimate expectation clearly draws sustenance from the parallel with the private law concept of estoppel. The general principle justifying estoppel and the public law principle of legitimate expectation are superficially similar; in both cases it is regarded as inequitable for the promisor to act inconsistently, to renege on a representation, peremptorily to go back on a promise. In important cases, however, a legitimate expectation has been founded in the absence of detrimental reliance, and there are good reasons why this should be so. First, it should be noted that detrimental reliance is not required for all kinds of private law estoppel. It is not a necessary element in what is known as `equitable' or `promissory' estoppel. Secondly, in relation to procedural fairness (substantive legitimate expectations will be considered separately below), the question is not whether the authority is bound to honour the expectation it induced, but only whether the promisee should be entitled to argue for its fulfilment. The parallel with concept of estoppel is therefore inexact. Thirdly, there is good reason to assert that public bodies should suffer the consequences of their representations unless strongly competing considerations of public policy indicate otherwise.

(Re: In Judicial Review of Administrative Action by De Smith, Fifth Edition, on page 427, at paras 8-059 and 8-060 under `Reliance on the representation.'

6C A person may be precluded (estopped) in legal proceedings from denying the existence of some state of

fact the existence of which he has previously asserted (by words or conduct) intending the other party to the proceedings to rely on the assertion, and in reasonable reliance on which that other person has, in fact, acted to his detriment. Though the facts asserted may be untrue, the principle of estoppel may make them unchallengeable. (Re: Garner - Administrative Law, 1985, p. 119) (as quoted by Mr. C.K. Thakkar in his book on Administrative Law, p. 515).

6D Estoppel is a rule of equity flowing out of fairness striking on behaviour deficient in good faith. It operates as a check on spurious conduct by preventing the inducer from taking advantage and assailing forfeiture already accomplished. It is invoked and applied to aid the law in administration of justice. But for it great many injustice may have been perpetrated. (Re: Indira Rai Vs. Nand Kishore (1990) 4 SCC 668)

6E "Para 8 - Doctrine of "promissory estoppel" has been evolved by the courts on the principles of equity to avoid injustice:

Para 9 - "Estoppel" in Black's Law Dictionary, is indicated to mean that a party is prevented by his own acts from claiming a right to the detriment of other party who was entitled to rely on such conduct and has acted accordingly. Section 115 of the Indian Evidence Act is also more or less, couched in a language which conveys the same expression.

Para 10 - "Promissory estoppel" is defined in Black's Law Dictionary as: `that which arises when there is a promise which promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of promisee, and which does induce such action or forbearance, and such promise is binding if injustice can be avoided only by enforcement of promise'

Para 11 - These definitions in Black's Law Dictionary which are based on decided cases, indicate that before the rule of `promissory estoppel' can be invoked, it has to be shown that there was a declaration or promise made which induced the party to whom the promise was made to alter its position to its disadvantage."

(Re: Ashok Kumar Maheshwari (Dr) Vs. State of U.P. (1998) 2 SCC 502 at pages 506-507).

6F In Halsbury's Laws of India, Volume 15, Chapter 5 "Promissory Estoppel" para 140.098 on page 75 it is held as under:

"When one party, by his words or conduct, has given a clear and unequivocal promise or assurance to the other, intending to affect legal relations between them and to be acted on accordingly, then it suffices that the other party has taken him at his word and acted on it. The one who gave the promise or assurance cannot afterwards be allowed to revoke it and revert to their previous legal relations as if he had made no such promise or assurance. He must accept their legal relations subject to the qualification which he has introduced. This doctrine has been variously called `promissory estoppel', `equitable estoppel', `quasi estoppel' and `new estoppel'. It is a principle evolved by equity to avoid injustice and though commonly named `promissory estoppel', it is neither in the realm of contract nor in the realm of estoppel. It differs from estoppel in pais in that the representation relied upon need not be one of present fact.

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The entire doctrine proceeds on the premise that it is reliance based and nothing more. It was often said that the party asserting estoppel must have been induced to act to his detriment. This concept has evolved through many decisions of the Indian courts to mean that alteration of position by the party is an indispensable requirement of the doctrine. It is not necessary to prove any further damage, detriment or prejudice to the party asserting estoppel."

6G Justice C. K. Thakkar in his book on Administrative Law submitted on page 529 that the observations made by Bhagwati, J in Motilal Sugar Mills (which I have set out earlier) lay down correct law on the point of promissory estoppel.

6H Professor M.P. Jain in Principles of Administrative Law, 4th Edition, Reprint 1998 on page 739 has observed regarding pronouncement of decision in

Motilal Padampat's case thus:

> "The Motilal Padampat pronouncement seems to be both principled and pragmatic as it promotes the concept of rule of law as well as protects legitimate public interest."

6-I Dr. I.P. Massey on Administrative Law, 5th Edition, 2001 on page 412 after considering various decisions of the Hon'ble Supreme Court in promissory estoppel observed as under:

> "In a democratic society, governed by the rule of law, every government which claims to be inspired by ethical and moral values must do what is fair and just to the citizens regardless of legal technicalities. In this context the judicial behaviour in the area of estoppel against the government is highly decisive."

6J Professor Sathe on Administrative Law, 6th Edition on page 485 has observed thus:-

> "Estoppel means that a person is stopped from denying what he has promised and relying upon which another person has acted and would be put to loss if the promise is not acted upon. Three essentials of the doctrine of estoppel in equity are : (1) there must be a promise or representation or an assurance (2) another person to whom such a promise or an assurance or a representation is made should act relying upon such a promise, or an assurance or a representation; (3) it should cause severe loss to the other person to whom such a promise or an assurance or a representation was made if it was not carried out."

6K There are three essential conditions for successfully invoking the doctrine of promissory estoppel, namely, (1) there must have been a definite representation by the government; (2) the appellant in fact should have altered his position by acting upon such representation and (3) they should have suffered some detriment by resting upon such representation.

CONCLUSION ON FACTS ON THE BASIS OF LAW LAID DOWN WHICH IS QUOTED ABOVE:

7 It was specifically stated that as far as grey

cloth is concerned, the Municipality must give complete exemption in this behalf otherwise it will not be possible economically or physically to have plot to be installed at Navsari. On this very specific contention the Municipality passed resolution dated 30th December, 1968, and granted complete exemption from payment for all times to come so far as grey cloth is concerned regarding process of the goods. As regards chemical and other products, the rate of octroi will be taken as per the rules particularly Rule 5(26) of the Octroi Rules.

8. In view of the specific resolution and in view of the provisions of the Municipality Act, Rules and Regulations, levy, assessment and collection are part of the taxing statute and exemption is also part of the same scheme of taxation because both levy and exemption go together and carry into effect the purpose of the legislation and therefore to find out true scheme of taxing measure, one has not merely to take into consideration the levy but also exemption granted therein. It may be noted that for chemicals and other products the Municipality levied octroi as per Rule 5 (26) of the Octroi Rules and granted exemption for five years which shows that the Municipality made deliberate departure of granting exemption to grey cloth for all years to come. Relying upon the said assurance the petitioner-company changed its position and constructed a plant at Navsari and relying upon the doctrine of promissory estoppel as reiterated by the Hon'ble Supreme Court in the various decisions, the Municipality is bound by the said assurance to the petitioner-company. Now it does not lie in the mouth of the municipality to say that as far grey cloth is concerned, the power of exemption is only for five years.

9. At this stage I have also considered the contentions raised by the learned counsel for the respondent that the Municipality has no power to grant complete exemption for ever to grey cloth in this behalf. For that purpose, I have considered the provisions of Entry No.52 of the List 2 of the Constitution and the provisions of the Municipality particularly Sec.271 and 275 and other relevant provisions in this behalf. I have also considered the provisions of regulations particularly clause 5. In fact, in clause 5 there is nothing in the act which limit the power of the Municipality that the Municipality can only give exemption for limited period. The exemption can be granted depending upon the provisions of the act, rules and bye-laws. In fact, sec.271 provides power to make rules and Clause (l) provides power to prescribe taxes.

The rule can be formulated for purpose of circumstances in which exemption will be allowed, the conditions on which and the extent to which remissions will be granted, and the system on which refunds will be allowed and paid in respect of such taxes; the limits of the charges or payments to be fixed in lieu of any tax. In some cases the legislature can limit the exemption depend upon the quality of goods and in certain aspects depending upon the period. In fact clause 5 provides exempt to levy of octroi on certain goods and there is no limit on the said goods in this behalf.

10. The specific entries which provides power for exemption itself negatived the contentions of the learned counsel for the respondent that the Municipality has no inherent power to give exemption for ever it all depend upon various circumstances in this behalf. It is no doubt true that clause 5(26) for which we are concerned the Municipality has decided to grant exemption to new industry only for five years but that is the legislature wisdom one cannot question the said wisdom of legislature in this behalf. It is for the legislature to decide as to whether exemption to be granted for limited period or for ever or to lay down any such condition in this behalf. Once power to levy tax/octroi is there, it presupposes power to exempt from levy of octroi in this behalf. I have referred various sections prohibit that the Municipality has no power to give exemption of octroi in this behalf. In fact the section lay down certain conditions on which the municipality can levy, assess and collect octroi in certain circumstances.

11. There is no substance in the contention raised by the learned counsel for the respondent that municipality had no power to exempt grey cloth in this behalf and had no power to pass such resolution particularly resolution dated 30th December, 1968, where it has decided to exempt grey cloth for ever. In fact the Municipality was conscious of this fact. The municipality has granted exemption for limited period only for other chemicals and other products & under Rule 5(26) of the Rules. The authorities cited by the learned counsel for the respondent are not applicable in the facts and circumstances of the case and in my view there is no substance in the contentions of the learned counsel for the respondent.

12 The petitioner has made a specific representation to the Municipality and after making the said representation the Municipality passed necessary resolution and thereafter the petitioner has altered its

position by acting upon such assurance and thereafter the petitioner has suffered some detriment by resting upon such representation. In view of the same, the principle of `promissory estoppel' enunciated by various courts are clearly applicable in this case and the petition can be allowed on this ground also.

13 I have considered facts and submissions made by the learned counsel for the petitioner. I have also considered the principle of `estoppel' as enunciated in the judgement of the Hon'ble Supreme Court in the cases of MOTILAL PADAMPAT SUGAR MILLS CO. LTD. (supra), UNION OF INDIA AND OTHERS VS. GODFREY PHILIPS INDIA LTD. (supra), POURNAMI OIL MILLS VS. STATE OF KERALA (supra), ADMINISTRATION OF DAMAN & DIU AND ANOTEHR VS. MOHANLAL LALBHAI DESAI (supra), AHMEDABAD ADVANCE MILLS LTD. VS. STATE OF GUJARAT AND ANOTHER (supra). I have also considered the treatise of Wade on Administrative Law and De Smith Woolf on Judicial Review of Administrative Action and also principle of Administrative Law enunciated by various other authors in this behalf.

14 I have referred to the treatise, Administrative Law by Wade, De Smith Woolf, Justice C.K. Thakkar, Dr. I.P. Massey, Mr. S.P. Sathe, Mr. Jain and Halbury's Laws of India. They all laid down same principle on the question of promissory estoppel. On these principles, it may be noted that the petitioner has been successfully able to prove the doctrine of promissory estoppel in this case. The petition is therefore required to be allowed and it is allowed accordingly. The respondents are permanently restrained from recovering octroi on the grey fabrics brought by the petitioner from their Bombay Mills within the octroi limits of the respondent which fabrics, after processing in their process house, are exported back and they are further restrained from recovering or taking any coercive measures in that behalf for recovery of octroi as threatened by them from January 1, 1977. Rule is made absolute. No order as to costs.

15 In view of the aforesaid facts and circumstances of the case, I am not considering the alternative submissions of Mr. S.I. Nanavati, learned senior counsel for the petitioner regarding sick industry.

(K.M. Mehta, J.)
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